

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

WP DEVON ASSOCIATES, L.P.,
a Pennsylvania limited partnership,

Plaintiff,

v.

HARTSTRINGS, LLC, a Delaware
limited liability company, and
AMERICAN CAPITAL, LTD,
a Delaware corporation,

Defendants

C.A. No. N11C-02-216 JRJ

OPINION

Date Submitted: May 7, 2012

Date Decided: July 26, 2012

Date Amended: July 26, 2012

*Upon Defendant American Capital, LTD.'s Motion to Dismiss Plaintiff's Second Amended Complaint: **DENIED in part and GRANTED in part.***

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Robert W. Whetzel, Esquire, Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, DE 19801 and Justin S. Antonipillai, Esquire (*pro hac vice*) (argued) and Robert A. Stolworthy, Jr., Esquire (*pro hac vice*), Arnold & Porter, LLP, 555 Twelfth Street, N.W., Washington, DC 20004, Attorneys for Defendant American Capital, Ltd.

Jurden, J.

I. INTRODUCTION

Before the Court is Defendant American Capital, Ltd.'s ("ACL") Motion to Dismiss. This case focuses on leases Hartstrings, LLC allegedly breached while renting retail and office space from WP Devon Associates, L.P. ("WPD").¹

At the time Hartstrings signed the Leases with WPD, Hartstrings owed secured and unsecured creditors more than \$39 million.² ACL was a secured creditor. Hartstrings' financial difficulties eventually caused ACL to liquidate its investment. Hartstrings sold substantially all of its assets to pay its debt and consequently could not make its monthly lease payments to WPD.³ WPD sued Hartstrings and ACL, claiming that ACL had a duty and failed to uphold that duty when, in its capacity as Hartstrings' parent company and secured creditor, it failed to inform WPD of Hartstrings' financial difficulties and ACL's intentions to withdraw its investment.⁴ WPD claims that ACL's omission constitutes fraudulent inducement and that ACL tortiously interfered with the Leases. ACL moves to dismiss WPD's Second Amended Complaint ("SAC") arguing that it failed to plead its fraudulent inducement claim with the requisite particularity necessary to

¹ Hartstrings was a children's clothier until it filed for bankruptcy on June 2, 2011. See Plaintiff's Second Amended Complaint at (Trans. ID. No. 39894604) ("SAC") at ¶ 2. WPD owns, manages, and operates a shopping center in Devon, Pennsylvania. *Id.* at ¶ 1.

² *Id.* at ¶ 22.

³ *Id.* at ¶ 32.

⁴ *Id.* at ¶ 42.

state a claim for fraud and that a “parent/subsidiary privilege” protects ACL’s decision to collect its debt. For the reasons that follow, ACL’s Motion to Dismiss is **DENIED in part and GRANTED in part.**

II. FACTS

Hartstrings and its predecessors leased office and retail space from WPD and its predecessors for many years, beginning in 1985.⁵ On October 21, 2010, Hartstrings and WPD executed new ten-year leases (the “Leases”) requiring monthly payments for both office and retail space in Devon Hills Shopping Center, in Devon, Pennsylvania.⁶ Before signing the Leases, Hartstrings and WPD negotiated and agreed to make \$115,000 in improvements to the office space to better accommodate Hartstrings’ specific needs.⁷

According to WPD, at the time the parties negotiated the leases, Hartstrings owed over \$39 million to various creditors, including State and local government tax authorities for back taxes.⁸ Hartstrings also owed ACL \$11 million in secured debt.⁹ WPD alleges that Hartstrings’ financial difficulties prompted ACL to liquidate its investment in Hartstrings by directing Hartstrings to sell its assets and

⁵ *Id.* at ¶¶ 4-11.

⁶ *Id.* at ¶¶ 12-13.

⁷ *Id.* at ¶ 14.

⁸ *Id.* at ¶ 22.

⁹ *Id.* at ¶ 11.

deliver the proceeds to ACL.¹⁰ Hartstrings Chief Financial Officer, Jeanne Lewis, contacted WPD on February 1, 2011 to notify WPD of Hartstrings' pending sale, and that "she did not know what would happen to the company's leases and employees."¹¹ In March 2011, Bill Finkelstein, an executive from Parigi Enterprises, LLC, informed WP Devon that Parigi was in the process of acquiring all or substantially all of Hartstrings' assets, and that it was considering whether it would assume any of Hartstrings' active leases.¹² Parigi purchased Hartstrings' assets on April 18, 2011 for \$6,177,961, leaving Hartstrings with no operating income, "insubstantial assets," and no need for its leases.¹³ WPD later learned that Parigi only intended to use 10,000 square feet of the available 18,300 square feet of office space through June 2012.¹⁴ WPD claims that the balance of the leases remains Hartstrings' obligation, a company that WPD describes as a "shell company that will have no means of complying with its obligations."¹⁵

¹⁰ *Id.* ¶ 23.

¹¹ *Id.* at ¶ 24.

¹² *Id.* at ¶¶ 25-26.

¹³ *Id.* at ¶ 30.

¹⁴ *Id.* at ¶ 31.

¹⁵ *Id.*

III. PARTIES' CONTENTIONS

WPD alleges that ACL, as Hartstrings' parent company and most significant investor, fraudulently induced WPD to enter into a new lease agreement with Hartstrings because ACL had a duty to disclose to WPD that: (1) Hartstrings was experiencing severe financial difficulties; (2) ACL was planning on causing Hartstrings to sell all or substantially all of its assets before Hartstrings signed the Leases or before WPD incurred renovation expenses;¹⁶ (3) the proceeds from the sale of Hartstrings' assets would benefit ACL; and (4) Hartstrings would not be able to fulfill its monthly obligation to pay its leases.¹⁷ WPD also alleges that ACL tortiously interfered with WPD's contractual relations with Hartstrings by intentionally causing Hartstrings to breach its lease.¹⁸

ACL moves to dismiss WPD's SAC arguing that WPD has failed to state a claim for either fraudulent concealment or tortious interference. With respect to WPD's fraudulent inducement claim, ACL notes that despite filing a second amended complaint, WPD "still fails to allege that American Capital had any contact whatsoever with [WPD], had any duty to [WPD], or acted in any way inconsistent with its role as an investor in Hartstrings."¹⁹ ACL also notes that

¹⁶ *Id.* at ¶ 42.

¹⁷ *Id.* at ¶ 50.

¹⁸ *Id.* at ¶¶ 58-64.

¹⁹ ACL's Motion to Dismiss ("Mtn. to Dismiss") (Trans. ID No. 40375801) at 15.

WPD's SAC establishes that Hartstrings, not ACL, negotiated the Leases, and that ACL is not named as a party or referenced in any of the lease agreements attached to WPD's SAC.²⁰ ACL further argues that WPD's allegations "are entirely conclusory and speculative, and are entitled to no deference" because they are unsupported by fact.²¹ ACL maintains that WPD was on notice of ACL's security interest in Hartstrings' assets because at the time the Leases were renewed, ACL had a UCC statement on file with the Delaware Division of Corporations stating that ACL had a security interest in "[a]ll present and future assets of Debtor."²²

ACL argues that WPD's tortious interference claim fails for multiple reasons. First, ACL argues that, as Hartstrings' parent company, it is afforded a corporate affiliate privilege to interfere in Hartstrings' business relationship when protecting a "legitimate concern."²³ Next, ACL argues that WPD's SAC contains conclusory and speculative allegations that lack factual support for its claims.²⁴ Last, ACL argues that its actions as Hartstrings' creditor were in no way improper.

²⁰ *Id.* at 17.

²¹ *Id.*

²² *Id.* at 17-18.

²³ *Id.* at 4.

²⁴ *Id.* 17-18.

ACL points out that WPD makes no claim that ACL interfered with Hartstrings' lease for a malicious or bad faith purpose.²⁵

IV. STANDARD OF REVIEW

ACL urges the Court to adopt the *Twombly-Iqbal* "plausibility" standard adopted by the United States Supreme Court and applied by the federal courts when reviewing 12(b)(6) motions to dismiss.²⁶ The Delaware Supreme Court recently addressed the "plausibility" standard in *Central Mortgage Co. v. Morgan Stanley Mortgage Capital Holdings LLC*.²⁷ There, the Delaware Supreme Court stated that, as the pleading rules stand in Delaware, the Court cannot dismiss a complaint "unless the plaintiff would not be entitled to recover under any reasonably conceivable set of circumstances," and noted that Delaware's standard differs from the "plausibility" standard of review.²⁸ The Delaware Supreme Court reaffirmed that "the governing pleading standard in Delaware to survive a motion to dismiss is reasonable conceivability."²⁹

²⁵ *Id.* at 20.

²⁶ See *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009) ("To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." (internal quotation marks omitted)); see also *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007).

²⁷ 27 A.3d 531 (Del. 2011).

²⁸ *Id.* at 535.

²⁹ *Cent. Mortg. Co.*, 27 A.3d at 537 (internal quotation marks omitted) (The Delaware Supreme Court declined to use *Central Mortgage Co.* "as the vehicle to address whether the *Twombly-Iqbal* holdings affect [Delaware's] governing [pleading] standard" because the parties had not fully and fairly litigated the issue before the Court of Chancery or the Delaware Supreme Court.).

As of January 20, 2012, in *Cambium Ltd. v. Trilantic Capital Partners III L.P.*, the Delaware Supreme Court reaffirmed its holding from *Central Mortgage Co.* and restated: “[W]e emphasize that, until this Court decides otherwise or a change is duly effected through the Civil Rules process, the governing pleading standard in Delaware to survive a motion to dismiss is reasonable ‘conceivability.’”³⁰ The Court will not adopt the higher “plausibility” standard here as ACL urges. Proceeding under the “conceivability” standard, the Court assumes that all well pled facts in the SAC are true, and will not accept conclusory allegations that lack a factual basis.³¹

V. DISCUSSION

A. Choice of Law

WPD and ACL disagree as to which State’s law should apply to WPD’s fraudulent inducement and tortious interference claims. WPD argues that Pennsylvania law applies with respect to its tortious interference claim for two reasons: (1) ACL “specifically asserted that American Capital is not in a parent/subsidiary relationship with Hartstrings, but is merely an investor,”³² and

³⁰ *Cambium Ltd.*, 2012 WL 172844, at *2 (citing *Cent. Mortg. Co.*, 27 A.3d at 537).

³¹ *Brevet Capital Special Opportunities Fund, LP v. Fourth Third, LLC*, 2011 WL 3452821, at *6 (Del. Super.).

³² WP Devon Associates, L.P.’s Answering Brief in Opposition to Defendant American Capital, Ltd.’s Motion to Dismiss (Trans. ID. No. 40606836) (“Pl.’s Ans. Br.”) at 7 (citing Transcript of Oral Argument held September 2, 2011 (Trans. ID. No. 42197403) (“Sep. 2 Trans.”) at 3-4 (“American Capital is a private equity, publicly traded fund that had invested in a company, in the company Hartstrings, not a parent subsidiary relationship, more an investor/investee relationship.”)).

therefore does not enjoy an affiliate privilege,³³ and (2) even if ACL is not bound by its earlier statements, relying on *Shared Communications Services of 1800-80 JFK Blvd. Inc. v. Bell*,³⁴ WPD argues that “courts in Pennsylvania have, at times, held parent companies liable for tortiously interfering with the contracts between its subsidiaries and third parties.”³⁵ WPD argues that Pennsylvania law also applies to its fraudulent inducement claim because WPD’s injury occurred in Pennsylvania.³⁶

ACL argues that because the law regarding claims for tortious interference and fraudulent inducement is the same in Pennsylvania and Delaware, the Court is not required to conduct a choice of law analysis.

To analyze choice of law, Delaware courts employ the “most significant relationship test”.³⁷ The Restatement (Second) Conflict of Laws Section 6(2) (hereinafter “the Restatement”) establishes that seven factors impact a choice of law inquiry: (a) the needs of the interstate and international systems, (b) the relevant policies of the forum, (c) the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue,

³³ Pl.’s Ans. Br. at 7 (citing *WaveDivision Holdings, LLC v. Highland Capital Mgmt. L.P.*, 2010 WL 1267126, at *7 (Del. Super.)).

³⁴ 692 A.2d 570 (Pa. Super. 1997).

³⁵ Pl.’s Ans. Br. at 7.

³⁶ *Id.* at 4.

³⁷ *Travelers Indem. Co. v. Lake*, 594 A.2d 38, 47 (Del. 1991).

(d) the protection of justified expectations, (e) the basic policies underlying the particular field of law, (f) certainty, predictability and uniformity of result, and (g) ease in the determination and application of the law to be applied. However, where the result would be the same under either jurisdictions' law, "[a]ccording to conflicts of law principles ... there is a 'false conflict,' and the Court should avoid the choice-of-law analysis altogether."³⁸

B. Tortious Interference

WPD alleges that ACL interfered in its lease agreements with Hartstrings when ACL caused Hartstrings to sell all of its assets, despite the financial obligations Hartstrings owed to WPD. Tortious interference claims under Delaware and Pennsylvania law are alike, and thus, the Court need not perform a choice-of-law analysis. Instead, the Court focuses on the Restatement (Second) of Torts (which both Delaware and Pennsylvania have both adopted). Tortious interference with an existing contractual relation is defined by Restatement (Second) of Torts Section 766, which states:

One who intentionally and improperly interferes with the performance of a contract (except a contract to marry) between another and a third person by inducing or otherwise causing the third person not to perform the contract, is subject to liability to the other for the

³⁸ *Deuley v. DynCorp Intern., Inc.*, 8 A.3d 1156, 1161 (Del. 2010) (citing *Berg v. Chilling Sys., Inc. v. Hull Corp.*, 435 F.3d 455, 462 (3d Cir. 2006)); see also *Lagrone v. Am. Martell Corp.*, 2008 WL 4152677, at *5 (Del. Super.) ("In such instances of 'false conflicts' of laws, the Court may resolve the dispute without a choice between the laws of the competing jurisdictions.").

pecuniary loss resulting to the other from the failure of the third person to perform the contract.³⁹

From this definition, the courts of Delaware and Pennsylvania have developed the elements that are necessary to succeed on a tortious interference claim.⁴⁰

Although ACL urges the Court to recognize a blanket “parent/subsidiary privilege,” thereby barring WPD’s tortious interference claim, a privilege of that magnitude is not the law in Delaware or Pennsylvania. The analysis the Court conducts when determining whether an entity’s conduct is privileged or justified when it interferes with a third party’s contract is done on a case-by-case basis, and hinges on whether the party’s conduct was proper.⁴¹ In the context of a motion to dismiss, the “burden ... fall[s] on the plaintiff to plead and prove that the privilege

³⁹ Restatement (Second) of Torts § 766 (1979); see also *Strickland v. Univ. of Scranton*, 700 A.2d 979 (Pa. Super. 1997). The Court is not relying upon Restatement (Second) of Torts § 767 for its analysis because the factors listed for the Court to consider when determining whether intentional interference with another’s contract is improper or without justification are fact-based determinations more appropriate for consideration on a motion for summary judgment.

⁴⁰ To establish a claim for interference with an existing contractual relationship under Pennsylvania law, a plaintiff must show: (1) the existence of a contractual relationship between the complainant and a third party; (2) an intent on the part of the defendant to harm the plaintiff by interfering with that contractual relationship; (3) the absence of privilege or justification on the part of the defendant; and (4) the occasioning of actual damage as a result of defendant’s conduct. *Phillips v. Selig*, 959 A.2d 420, 429 (Pa. Super.Ct. 2008) (citing Restatement (Second) of Torts § 766 (1979)); *Small v. Juniata College*, 682 A.2d 350, 354, *appeal denied*, 689 A.2d 235 (Pa. 1997); *Triffin v. Janssen*, 626 A.2d 571, 574 (1993), *appeal denied*, 639 A.2d 32 (Pa. 1994)). Similarly, under Delaware law a plaintiff must establish: “(1) a contract, (2) about which [the] defendant knew and (3) an intentional act that is a significant factor in causing the breach of such contract (4) without justification (5) which causes injury.” *Commonwealth Const. Co. v. Endecon, Inc.*, 2009 WL 609426, at *6 (Del. Super.) (citing *Luscavage v. Dominion Dental USA, Inc.*, 2007 WL 901641, at *2 (Del. Super.)). See also *Allen Family Foods, Inc. v. Capitol Carbonic Corp.*, 2011 WL 1205138, at *6 (Del. Super.) (citing *Grunstein v. Silva*, 2009 WL 4698541, at *16 (Del. Ch.)).

⁴¹ See *Shearin v. E.F. Hutton Grp., Inc.*, 652 A.2d 578, 591 (Del. Ch. 1994); *Green v. Interstate United Mgmt. Servs. Corp.*, 748 F.2d 827, 831 (3d Cir. 1984) (noting that “Pennsylvania now follows the second Restatement, which eschews the concept of privilege to interfere in favor of a case-by-case inquiry as to whether the alleged interference is improper. See *Adler, Barish, Daniels, Levin & Creskoff v. Epstein*, 482 Pa. 416, 430–31, 433 n. 17, 393 A.2d 1175, 1183, 1184 n. 17 (1978).”).

among affiliates to discuss and recommend action is not applicable or, stated affirmatively, to allege facts that would make the 'interference' improper."⁴²

Accepting well pled facts as true, WPD has met its burden.⁴³ WPD's SAC alleges that ACL's act of causing Hartstrings to "sell substantially all of its operating assets because it desired Hartstrings to make payments on the ACL Debt at the expense of Hartstrings' other creditors, including ... [WPD]" was improper.⁴⁴ WPD supports this claim by alleging that Hartstrings made a number of payments to ACL, all of which were "significantly greater than the payments traditionally made by Hartstrings to ACL to service the ACL debt."⁴⁵ As a result, Hartstrings made a total of \$7,266,393 in payments to ACL in the two weeks following the sale of Hartstrings' assets. According to WPD, ACL's actions left Hartstrings with "little or no assets with which to make payments under the ...

⁴² *Shearin*, 652 A.2d at 591; see also *Green*, 748 F.2d at 831; *Yaindl v. Ingersoll-Rand Co. Standard Pump-Aldrich Div.*, 422 A.2d 611, 622, n. 11 (Pa. Super. 1980) (finding that "the third element, 'the absence of privilege or justification on the part of the defendant,' is merely another way of stating that the defendant's conduct must be improper."); *P.V.C. Realty ex rel. Zamas v. Weis Markets*, 2000 WL 33406981, at *13 (Pa.Ct.Com.Pl. 2000) (stating that the "Restatement (Second) of Torts § 766 changes the focus to whether the actor's conduct was proper.").

⁴³ The Court is aware that courts in both Pennsylvania and Delaware have found "interference" to be "privileged." See *Shearin*, 652 A.2d at 591; *Green*, 748 F.2d at 831; *Advent Sys., Ltd. v. Unisys Corp.*, 925 F.2d 670 (3d Cir. 1991). However, those cases focused on whether the defendant's conduct was proper. As the Court in *Green* noted, the Restatement (Second) of Torts has shunned a blanket privilege when corporate affiliates interfere in one another's contracts. *Shared Communications*, which WPD's relies upon to argue against a corporate privilege, recognizes the "privilege" as it is discussed in both *Green* and *Advent Systems*, but distinguished itself from those cases when it agreed with the lower court that the defendant's acted improperly. See *Shared Communications*, 692 A.2d at 574-575. The fact that a Pennsylvania court has held a "parent" company's actions to be improper in one case does not mean that an "affiliate privilege" does not exist under Pennsylvania law.

⁴⁴ SAC at ¶ 32.

⁴⁵ *Id.* at ¶ 34.

Leases....”⁴⁶ Consequently, ACL’s Motion to Dismiss with respect to WPD’s tortious interference claim is **DENIED**.

C. Fraudulent Inducement

A claim of fraudulent inducement must be pled with particularity under Superior Court Civil Rule 9(b).⁴⁷ Rule 9(b) ensures that a defendant is put on sufficient notice so that it may defend itself against a plaintiff’s allegations.⁴⁸

As with WPD’s tortious interference claim, the Court is not required to conduct a choice of law analysis for WPD’s fraudulent inducement claim.⁴⁹ Pennsylvania and Delaware both follow the Restatement (Second) of Torts Section 551, which states:

One who fails to disclose to another a fact that he knows may justifiably induce the other to act or refrain from acting in a business transaction is subject to the same liability to the other as though he had represented the nonexistence of the matter that he has failed to disclose, if, but only if, he is under a duty to the other to exercise reasonable care to disclose the matter in question.

⁴⁶ *Id.* at ¶35.

⁴⁷ *MicroStrategy Inc. v. Acacia Research Corp.*, 2010 WL 5550455, at* 15 (Del. Ch.).

⁴⁸ *Chesapeake & Potomac Tel. Co. v. Chesapeake Utils Corp.*, 436 A.2d 314, 338 (Del. 1981).

⁴⁹ The elements of fraudulent inducement under Delaware and Pennsylvania law are not materially different. Establishing a claim for fraudulent inducement under Pennsylvania law requires: (1) a misrepresentation; (2) scienter on behalf of the misrepresenter; (3) an intention by misrepresenter that the recipient will be induced to act; (4) justifiable reliance by the recipient upon the misrepresentation; and (5) damage to the recipient. *Moser v. DeSetta*, 589 A.2d 679, 682 (Pa. 1991). To succeed on a claim under Delaware law a complaint must allege: (1) that a defendant made a false representation, usually one of fact; (2) with the knowledge or belief that the representation was false, or with reckless indifference to the truth; (3) with an intent to induce the plaintiff to act or refrain from acting; (4) that plaintiff’s action or inaction was taken in justifiable reliance upon the representation; and (5) damage to the plaintiff as a result of her reliance on the representation. *Brevet Capital Special Opportunities Fund, LP v. Fourth Third, LLC*, 2011 WL 3452821, at *7 (Del. Super.).

“To be actionable, a misrepresentation need not be in the form of a positive assertion but is any artifice by which a person is deceived to his disadvantage and may be by ... concealment of that which should have been disclosed”⁵⁰ And an “omission is actionable as fraud only where there is an *independent duty to disclose* the omitted information ... and such an independent duty exists where the party who is alleged to be under an obligation to disclose *stands in a fiduciary relationship* to the party seeking disclosure....”⁵¹ Fiduciary relationships exist “when one person has reposed a special confidence in another to the extent that the parties do not deal with each other on equal terms, either because of an overmastering dominance on one side or weakness, dependence or justifiable trust, on the other.”⁵² Thus, absent a fiduciary relationship, there is no duty to speak, and an alleged omission does not constitute fraud.⁵³ Determining whether a duty exists, although a mixed question of law and fact, is for the Court to decide as a matter of law.⁵⁴

⁵⁰ *Wilson v. Donegal Mut. Ins. Co.*, 598 A.2d 1310, 1315 (Pa. 1991) (citing *Delahanty v. First Pennsylvania Bank, N.A.*, 464 A.2d 1243, 1252 (Pa. 1983)).

⁵¹ *In re Estate of Evasew*, 584 A.2d 910, 913 (1990) (other citation omitted) (emphasis added).

⁵² *Commonwealth Dep't of Transp. v. E-Z Parks, Inc.*, 620 A.2d 712, 717 (Pa. 1993) (citations omitted). Comment a to Section 874 of the Restatement (Second) of Torts states that a “fiduciary relation exists between two persons when one of them is under a duty to act for or to give advice for the benefit of another upon matters within the scope of the relation.”

⁵³ *Wilson*, 598 A.2d at 1316.

⁵⁴ *Naidu v. Laird*, 539 A.2d 1065, 1070 (Del. 1988).

Although WPD alleges that ACL had a duty to disclose the pending asset sale and Hartstrings' financial difficulties, WPD provides no facts that support the conclusion that ACL's position created a duty to disclose. WPD clings to the averment that ACL's role as a significant investor in Hartstrings somehow creates an obligation to warn WPD of ACL's business decisions. But WPD's complaint is devoid of allegations that suggest ACL and WPD had any kind of a relationship, let alone a special relationship, or communications, that could establish a fiduciary obligation on the part of ACL. A fiduciary relationship is created when "the parties do not *deal with each other* on equal terms ..." or when there is a justifiable dependence or trust.⁵⁵ The SAC is clear – WPD and ACL never dealt with one another. The SAC does not allege that ACL is a party to the lease. Moreover, it does not allege that representatives from ACL and WPD spoke to one another. All of the alleged interactions in WPD's SAC are between Hartstrings and WPD.⁵⁶ While the pleading standard in Delaware is a minimal one, the Court does not accept conclusory allegations that lack factual support.⁵⁷ WPD's allegation that ACL had a duty to speak, absent any kind of a relationship or communication between ACL and WPD, is purely "conclusory." Thus, ACL's Motion to Dismiss WPD's fraudulent inducement claim is **GRANTED**.

⁵⁵ *E-Z Parks, Inc.*, 620 A.2d at 717.

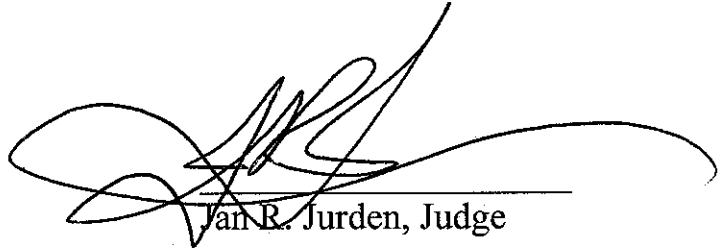
⁵⁶ SAC at ¶¶ 4, 8-14, 17, 24, 28, 43, 44-46.

⁵⁷ *Brevet Capital Special Opportunities Fund, LP*, 2011 WL 3452821, at *6.

VI. CONCLUSION

For the reasons set forth above, ACL's Motion to Dismiss WPD's tortious interference claim is **DENIED** and its Motion to Dismiss WPD's fraudulent inducement claim is **GRANTED**.

IT IS SO ORDERED.



Jan R. Jurden, Judge

cc: Prothonotary